



California
Fair Political
Practices Commission **SUPERSEDED**

April 8, 1987

by: 93-297

Judith A. Robbins
Assistant Town Attorney
Town of Danville
c/o Williams & Robbins
P.O. Box 698
Benicia, CA 94510

Re: Your Request for Advice
Our File No. A-87-074

Dear Ms. Robbins:

You have written requesting advice on behalf of Danville Mayor Doug Offenhartz.^{1/} At your request, we expedited review of your questions and provided you with telephone advice prior to a March 19 town council meeting. This letter confirms our previous telephone advice.

QUESTION

Does Mayor Offenhartz' financial interest in decisions affecting a parcel known as the Morgan property also require him to disqualify himself from participation in decisions on the adjacent Tassajara Ranch, Vista Tassajara and Edmunston/Shadow Creek properties?

CONCLUSION

Mayor Offenhartz' financial interest in decisions affecting the Morgan property will require him to disqualify himself from participation in decisions on the adjacent properties.

^{1/} Your original letter was received by our office on March 5, 1987. However, you omitted the referenced maps, which you subsequently forwarded. These were received in our office on March 9, 1987. On March 10, 1987, I spoke by telephone with Mayor Offenhartz to clarify the facts. As a result, the period for responding to your request runs through April 8, 1987.

FACTS

Mayor Offenhartz and the Morgan Property

Mr. Offenhartz is the owner and president of Oak Creek Realty in Danville. In that capacity, he entered into a contract in March 1980 with Al Morgan (owner of the Morgan Ranch property) for an option on the Morgan property.^{2/} A commission was to be paid to Oak Creek Realty in the amount \$150,000. The contract originally provided for a close of escrow by April 15, 1984.

In April 1980, Mr. Offenhartz assigned the contract to Land Factors, Inc., and California Resources, Inc. Under the terms of the assignment, Mr. Offenhartz retained a 25-percent interest in the option and split the commission 50/50 with another broker.

On April 15, 1982, Mr. Offenhartz negotiated an extension of the option until April 15, 1988. The price was to remain fixed through April 15, 1987, after which exercise of the option would result in an increase in the purchase price. However, the price under the option contract is not dependent upon development plan approval or any other conditions.

On September 25, 1984, the option was assigned to a partnership (BG-I) under the control of Signature Properties. Oak Creek Realty, received \$87,500 cash and a note for \$87,500 for Mr. Offenhartz' 25-percent interest in the option. The note was assigned to Mr. Offenhartz' father, who paid Mr. Offenhartz in cash. The note held by Mr. Offenhartz' father was paid off in late 1985. Mr. Offenhartz did not locate the buyer of the option and did not represent Signature Properties in the assignment of the option, nor did he receive any commission income from the assignment transaction. The funds and note which he received represented proceeds from the sale of his 25-percent interest in the option.

Mr. Offenhartz' only remaining tie to the Morgan property is the balance of the commission which is due upon close of

^{2/} You have advised me by telephone that Al Morgan is actually the trustee for the Morgan family trust, which is the owner of the Morgan Ranch property. As trustee, Mr. Morgan has signatory power for the trust. For purposes of our analysis, we will treat Mr. Morgan and the trust as one and the same. The analysis is the same whether we consider the trust or Mr. Morgan to be owner/seller of the Morgan property.

escrow. The remaining commission is one-half of the \$150,000 sales commission originally agreed to with Mr. Morgan, the seller.

Neither the purchase price nor the sales commission is conditioned upon development approval from the Town of Danville. The Mayor believes that the current option-holder/purchaser (Signature Properties) will proceed with the purchase regardless of any action by the Town of Danville because: (1) Signature has already paid \$400,000 or more (nonrefundable) to the seller toward the purchase price and has invested substantial time and money in development planning; and (2) the Morgan property is now worth much more than the option price, even assuming the minimum possible development.

The Mayor has abstained from participating in decisions on development applications for the Morgan property and will continue to do so. The question is whether he should also disqualify himself from participating in decisions on various development applications for three other nearby properties.

The Morgan Property and the Other Three Properties

To the east of Danville's town limits and within Danville's sphere of influence are four properties known as the Morgan property, Tassajara Ranch, Vista Tassajara and Edmunston/Shadow Creek. These are shown on the maps attached as Exhibits A-1 and A-2. These four properties are the subject of annexation proposals by the Town of Danville. The properties are currently going through the planning process in the town. The decisions which will be coming before the town council in the near future include tentative subdivision map, development plan, and development agreement approvals for three of the four parcels (excluding Edmunston/Shadow Creek). All of the properties except the Morgan property are also currently going through the planning process with the county. (Apparently, this is to maintain their options if they do not obtain a favorable resolution from the town.)

By way of example, the town council was scheduled to consider an appeal on March 19 from a planning decision recommending approval of a tentative subdivision map, development plan and development agreement for Vista Tassajara. Similar decisions for the other properties will likely be coming before the town council in the near future. It is likely that land use entitlements for the Morgan property, together with the standard conditions of approval, will be approved before the town council considers the other properties.

ANALYSIS

The Political Reform Act (the "Act")^{3/} provides that no public official shall make, participate in making, or use his or her official position to influence the making of a governmental decision in which the official has a financial interest. (Section 87100.) An official has a financial interest in a decision if it will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on the official, members of his or her immediate family, or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(a) - (d).

Mayor Offenhartz is a public official. The decisions of the Danville Town Council regarding the development and annexation of the four properties are governmental decisions. Mr. Offenhartz has an investment worth \$1,000 or more in, receives income of \$250 or more from, and is an officer of, Oak Creek Realty, Inc. (Section 87103(a), (c) and (d).) Therefore,

^{3/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

he must disqualify himself from any decision which will have a reasonably foreseeable material financial effect on Oak Creek Realty, Inc., which is distinguishable from the effect on the public generally.

Al Morgan is a source of \$250 or more in income "promised to" Mr. Offenhartz within the preceding 12 months. (Sections 82030(a) and 87103(c).) Where a real estate transaction has been consummated, such as here, but the commission has not yet actually been received, the commission income is considered "promised to" the broker or agent. (See Advice Letters to Stanley Remelmeyer, No. A-81-510, and to Robert L. Felts, A-85-130, copies enclosed.)

Mr. Offenhartz represented the seller, Al Morgan. Therefore, only Mr. Morgan is considered to be a source of the promised commission income. (Regulation 18704.3(c)(2), copy enclosed.) Signature Properties was a source of income to Mr. Offenhartz in the past when it purchased his 25-percent interest in the option. The proceeds of the sale of his option interest are considered income under the Act. (Section 82030(a).) However, all payments of those proceeds occurred more than 12 months ago. Consequently, Signature Properties is not considered a source of income to Mr. Offenhartz under Section 87103(c).

Since Mr. Offenhartz has sold his 25-percent interest in the option and assigned the note (which has since been paid off), he no longer has any "interest in real property" in the Morgan property. (Section 82033.)

Therefore, Mr. Offenhartz will only be required to disqualify himself from making or participating in making any decisions which will affect his current economic interests (i.e., his real estate business or Al Morgan). With respect to decisions relating directly to the Morgan property, his disqualification is clearly required. Mr. Offenhartz stands to receive \$75,000 in real estate commission through his realty business if the Morgan property sale is consummated. (Section 82030(a); Regulation 18704.3(b) and (d).)

In addition, Al Morgan, who is a source of income to Mr. Offenhartz, still retains ownership of the property. Mr. Morgan is "appearing" in the proceeding before the town

council regarding his property.^{4/} (See Regulation 18702.1(a)(1) and (b), copy enclosed.) The value of the property in which Mr. Morgan has a residual interest, should the sale fall through, will be directly and significantly affected by the proceedings regarding the Morgan property.

The foregoing effects upon Mr. Offenhartz' business and Mr. Morgan are clearly distinguishable from the decision's effects upon the public generally.

For the decisions relating to the other three nearby properties, we must analyze whether those decisions will have a reasonably foreseeable material financial effect upon the value of the Morgan property. In my discussion with Mr. Offenhartz over the telephone, he conceded that it was reasonably foreseeable that rejection of the other projects would decrease the supply of developable property and thereby increase the value of the Morgan property. We concur in his conclusion.

In addition, we have received a communication from Jonathan Cohen, attorney for Live Oak Associates II, sponsor of the Vista Tassajara subdivision. An appeal related to that subdivision was to be considered by the town council on March 19. Mr. Cohen's letter refers to the two Tassajara properties and the Morgan property and alleges that:

... the Town Council is considering relative densities of the three projects within the Dougherty Road General Plan Amendment area, traffic holding capacities for the three subdivisions, common road fees and annexation of the three projects to the Town.... [T]he three projects are inextricably linked; if the density of one or more of the projects is reduced because of a concern regarding the traffic holding capacity for all the projects or if the road fees are substantially increased, there could be a direct economic effect on the financial feasibility of acquiring and developing the Morgan Property....

In its advice-giving role, the Commission is not a fact-finder. (See Oglesby Opinion, 1 FPPC Ops. 71 at 77, fn.6,

^{4/} You have indicated that as owner of the property, Mr. Morgan, along with a representative for Signature Properties, has signed the land-use application made to the town, which is the subject of the pending decisions.

Judith A. Robbins
April 8, 1987
Page 7

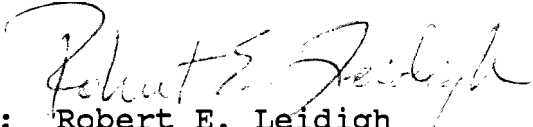
No. 75-083, copy enclosed.) The Commission provides advice based upon the facts supplied by the official or his or her agent rather than facts supplied by third parties. However, on occasion, additional information is provided by others which helps the Commission's staff to fully understand the circumstances surrounding a particular advice request.

Here, the information provided by Mr. Cohen confirms the conclusion reached by Mayor Offenhartz. Concurrent decisions affecting the neighboring properties will have a reasonably foreseeable financial effect upon Al Morgan as owner of the Morgan property. It seems quite clear that these effects would be of sufficient magnitude to be considered material as well as distinguishable from any effects upon the public generally. (See generally Regulations 18702, 18702.1, 18702.2 and 18703, copies enclosed.)

Should you have any questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Robert E. Leidigh
Counsel, Legal Division

REL:plh
Enclosures

JONATHAN A. COHEN
A PROFESSIONAL LAW CORPORATION

TAIPEI OFFICE:
2ND FLOOR, SUITE 201
575 LIN-SHEN N. RD.
TAIPEI, TAIWAN
TELEPHONE: (02) 595-6124/6
FAX: (02) 596-8245

COHEN & HSU
ATTORNEYS AT LAW
ONE MARKET PLAZA
SPEAR STREET TOWER, SUITE 2210
SAN FRANCISCO, CALIFORNIA 94105
TELEPHONE
(415) 777-0300
TELECOPIER: (415) 777-1527
CABLE: ONEMKPLZ
TELEX: WUI 67665

F P F
MAR 11 0 51 33 PM '87
PASADENA OFFICE:
CROCKER BANK BUILDING
80 SOUTH LAKE AVENUE
SUITE 715
PASADENA, CALIFORNIA 91101
TELEPHONE: (818) 584-0891
FAX: (818) 584-1894

March 10, 1987

Robert Litig, Esq.
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

RE: Request for Written Opinion Regarding
Financial Interest of Mayor of Danville

Dear Mr. Litig:

I am writing this letter on behalf of Live Oak Associates II, a California Limited Partnership, sponsor of the Vista Tassajara Subdivision, which appeal is scheduled to be heard on March 19, 1987 before the Town Council of Danville. We are concerned about the potential conflict of interest that Doug Offenhartz has as Mayor in participating in the deliberation and action on the Vista Tassajara and Tassajara Ranch Projects. We understand that Mr. Offenhartz has a "financial interest" in the pending sale of the Morgan Property to Signature Properties, as that term is defined pursuant to Government Code Section 87103. We understand Mr. Offenhartz has requested a written opinion from the Fair Political Practices Commission in a letter dated March 3, 1987.

At this time, the Town Council is considering relative densities of the three projects within the Dougherty Road General Plan Amendment area, traffic holding capacities for the three subdivisions, common road fees and annexation of the three projects to the Town. Government Code Section 87100 et seq. restricts a public official from participating in a governmental decision in which he knows or has reason to know he has a financial interest. In this case, the three projects are inextricably linked; if the density of one or more of the projects is reduced because of a concern regarding the traffic holding capacity for all the projects or if the road fees are substantially increased, there could be a direct economic effect on the financial feasibility of acquiring and developing the Morgan Property. There has been a threat of litigation against all of the projects by Tassajara Now and Tomorrow, a local citizens group. If the City Council of Danville was to reduce the density of the Tassajara Ranch and Vista Tassajara in order to avert the chance of litigation against the Morgan Property there would appear to be a direct conflict.

COHEN & HSU

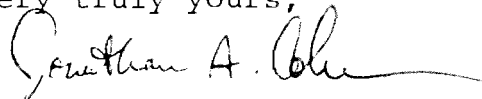
ATTORNEYS AT LAW

We understand that Mayor Offenhartz will not be participating in the decision on the appeal on the Morgan Property. However, because of the clear linkage of the three Dougherty Road projects, any decision on the two other projects will affect the financial feasibility of the Morgan project. For example, if densities are reduced on the Tassajara Ranch and the Vista Tassajara projects and/or if these two projects are referred back to the Planning Commission, while the Morgan project is allowed to proceed, clearly the Morgan project will realize a direct financial benefit, which would increase the likelihood of Mayor Offenhartz receiving what we understand to be a real estate brokerage commission on the Morgan project.

Because of this concern, we would appreciate it if Mayor Offenhartz would refrain from continued participation in the decision-making process regarding each of these projects. Otherwise, the actions of the Town Council could be so sufficiently tainted with regard to all three projects that decisions affecting them could be potentially set aside in court pursuant to Government Code Section 91003. We would refer you specifically to 3 FPPC Opinion 38 (1977) concerning the conflict of interest the FPPC determined to exist with regard to Mayor of Santa Clara's financial interest in properties neighboring an area considered for rezoning in which the FPPC concluded that the Mayor was required to disqualify himself from "making, participating in making or in any way attempting to use his official position to influence that decision." Moreover, a real estate brokerage commission is clearly within the scope of "financial interest" pursuant to Title 2 California Administrative Code Section 18704.3, and its nature and extent should be disclosed pursuant to Government Code Section 87206.

The opponents of the projects have expressed their willingness to undertake litigation to stop the projects. We are aware that the City Attorney has asked for an oral opinion regarding Mayor Offenhartz' conflict. If this opinion is favorable all the projects may be jeopardized by litigation challenging the actions of the Town Council and Mayor Offenhartz's participation in the decision making process. In light of this very real threat, we would urge that the FPPC prepare a written opinion on which all parties could rely if the litigation is initiated. I appreciate your consideration of this matter and would appreciate it if you would inform us of your position in writing, so that we are informed of the legal authority supporting your position.

Very truly yours,



JONATHAN A. COHEN

JAC/lm

cc: William A. Falik

WILLIAMS

F P P
MAR 5 6 59 AM '87

March 3, 1987

& ROBBINS

Diane Griffiths
General Counsel
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804

Attorneys at Law
1060 Grant Street
Suite 201
P.O. Box 698
Benicia, California
94510

(415) 228-3840
(707) 746-1011

Charles J. Williams
A Professional Corporation

Judith A. Robbins

Michael R. Woods

Re: Request for Written Opinion Regarding
Financial Interest of Mayor of Danville

Dear Ms. Griffiths:

This office represents the Town of Danville as its town attorney. The mayor, Doug Offenhartz, asked us to request a written opinion from you regarding the circumstances described below.

The matter at issue is scheduled on the Danville Town Council agenda for March 19, 1987 and we would appreciate a response from you before that date. Yesterday I spoke to Kathy Donovan of your office. She told me that if you could not respond in writing by the 19th, you could nevertheless give us a telephone response by that date, to be confirmed in writing later.

Question

The question is whether the mayor's financial interest in a certain property requires him to abstain from participating in decisions on adjacent properties.

Factual background

To the east of Danville's town limits and within Danville's sphere of influence are four properties known as the Morgan Property, Tassajara Ranch, Vista Tassajara and Edmunston/Shadow Creek. These are shown on the map attached as Exhibit "A". These four properties are the subject of annexation proposals by the Town and are currently going through the planning and land use entitlement process in the Town. The decisions which will be before the Town Council in the near future include tentative subdivision map, development plan and development agreement approvals for three of the four parcels (excluding Edmunston/Shadow Creek).

Fair Political Practices Commission
Page 2
March 3, 1987

The mayor is a real estate broker doing business in Danville as Oak Creek Realty, Inc. Oak Creek Realty has an interest in one of the properties, the Morgan Property. The mayor has described the circumstances in his February 26, 1987 letter (attached as Exhibit "B") and to us by telephone as follows.

In 1980, Oak Creek Realty entered into an option contract to purchase the Morgan Property for \$1,750,000. As a result of transactions in 1982 and 1984, Oak Creek sold its interest in the option. The date for exercise of the option (including an extension) is April 15, 1988. Oak Creek's only remaining interest is in one-half of a \$150,000 sales commission due on close of escrow. The commission will be paid by the seller, Mr. Morgan.

Neither the purchase price nor the sales commission depends upon development approval from the Town. The mayor believes that the current option holder/purchaser (Signature Properties) will proceed with the purchase regardless of any action by the Town because (1) it has already paid \$400,000 or more (non-refundable) to the seller toward the purchase price and invested substantial time and money in development planning, and (2) the Morgan Property is now worth much more than the option price, even assuming the minimum possible development.

The mayor has abstained from participating in decisions on development applications for the Morgan Property and will continue to do so. The question is whether he should also abstain from participating in decisions on development applications for the other three properties. For example, on March 19, 1987, the Town Council is scheduled to consider an appeal from a planning commission decision to approve a tentative subdivision map, development plan and development agreement for the Vista Tassajara property. Similar decisions for the other properties will likely be before the Council in the future.¹

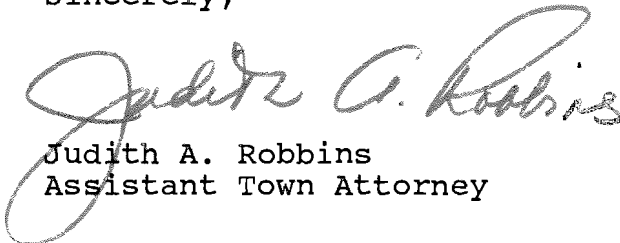
¹ It is likely that land use entitlements for the Morgan Property, together with standard conditions of approval for all the properties, will be approved before the Council considers the other properties. We understand that the order of approvals may be a factor in your opinion.

Fair Political Practices Commission
Page 3
March 3, 1987

Referring to Government Code §87103, we think the issues are twofold: (1) whether Signature Properties (the option holder/purchaser) is a "source of income" to the mayor and, if so, (2) whether it is reasonably foreseeable that the Town's decisions on land use entitlements for the other three properties will have a material financial effect on Signature Properties.

If you have questions, you are welcome to call the mayor, Doug Offenhartz, directly at (415) 820-6272 or me at (415) 228-3840. We would appreciate either a written or oral response from you by March 19.

Sincerely,



Judith A. Robbins
Assistant Town Attorney

JR:sd

cc: Doug Offenhartz, Mayor
Michael Davis, Town Manager

EXHIBIT "A"

Exhibit "A", Map of Parcels, is being delivered to this office and will be forwarded to you within two days.

EXHIBIT A

February 26, 1987

Mr. Charles J. Williams
Town Attorney, Town of Danville
1060 Grant Street, Suite 201
P. O. Box 698
Benecia, CA 94510



Oak Creek Realty

Dear Charlie:

As I mentioned to you on the phone today, Mr. William Falik has raised the issue of conflict of interest relative to my voting on his project (and therefore on similar projects) in the Tassajara area. I would like to outline the facts of the situation, and ask you to get a letter opinion from FPPC to clarify my position.

There are four properties in Danville's Sphere of Influence which received General Plan Amendments from Contra Costa County in the past several years. They are commonly known as the Morgan Ranch, Tassajara Ranches, Vista Tassajara and Edmunston Ranch. All properties are subject to annexation request by the Town of Danville, and currently going through the planning process in both the Town and County (with the exception of the Morgan Ranch, which recently withdrew its application from the County).

In March, 1980, I, as President of Oak Creek Realty, Inc., entered into a contract with Al Morgan (owner of the Morgan Ranch) to option his property for \$1,750,000 with a commission to Oak Creek Realty, Inc. in the amount of \$150,000. Said contract provided for a close of escrow by April 15, 1984.

In April, 1980, I assigned said contract to Land Factors, Inc. and California Resources, Inc. Under the terms of that assignment, I retained a 25% interest in the option, and shared my commission with another broker on a 50/50 split.

On April 15, 1982, I negotiated an extension of said option until April 15, 1988.

On September 25, 1984, said option was assigned to a partnership (BG-I) under the control of Signature Properties in consideration for a payment of \$700,000, half in cash and the balance in the form of a one year note. Oak Creek Realty, Inc. received \$87,500 cash and a note for \$87,500. Said note was assigned to my father, Mr. Harry Offenhartz, and paid off in late 1985.

To date, my only remaining relationship with the property is the ~~arrangement~~ ^{commission} which is payable upon close of escrow. The option contract provides for an increase in purchase price if exercised after April 15, 1987; it is not dependent on development plan approval or any other condition.

EXHIBIT B

Various members of a homeowner association, Tassajara Now and Tomorrow (TNT), have raised the issue of conflict of interest. The developer of the Vista Tassajara property, Mr. William Falik, has asked me to step down from voting on his project due to a potential conflict of interest.

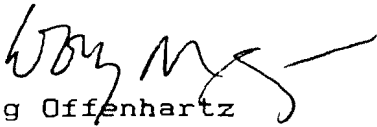
To date I have participated in decisions as a member of the Town Council relative to the tentative map and annexation agreement for all properties except the Morgan Ranch. As Mayor, I have represented the Town in a study session with members of the Board of Supervisors discussing all development in the sphere of influence area. In discussions and votes relative to the Morgan Ranch, I have stated my conflict and abstained.

Tonight I will announce my decision to seek an opinion from FPPC and abstain from discussion of the Tassajara Ranches appeal of the Planning Commission decision. I am hopeful that a determination from FPPC would allow me to participate on the Vista Tassajara project and any subsequent hearings relative to the other properties in the Sphere area, excepting the Morgan Ranch.

It has been my position previous to tonight, that once standard conditions of approval were established for all the properties during the hearings for the Morgan Ranch (this is the first project being considered because it was first to apply and is the only project adjoining the Town limits), I could vote on the remaining projects within the Sphere. I am hopeful that the FPPC will find that judgement to be correct.

Thanks very much for your assistance in this matter.

Very truly yours,
OAK CREEK REALTY, INC.


Doug Offenhartz
President

cc: members of the Danville Town Council
Mr. Mike Davis, Manager

F P P C
MAR 9 9 04 AM '87

WILLIAMS

March 6, 1987

& ROBBINS

Diane Griffiths
General Counsel
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804

Attorneys at Law
1060 Grant Street
Suite 201
P.O. Box 698
Benicia, California
94510

(415) 228-3840
(707) 746-1011

Charles J. Williams
A Professional Corporation

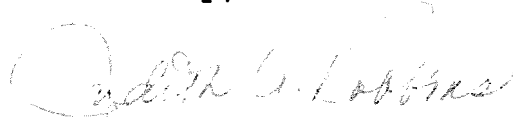
Judith A. Robbins
Michael R. Woods

Re: Request For Written Opinion Regarding
Financial Interest of Mayor of Danville

Dear Ms. Griffiths:

I wrote to you on March 3, 1987 requesting a written opinion. In that letter I advised you that I would be sending the Exhibit A, map of parcels. Enclosed are the Exhibit A maps which should be attached to the March 3 request. Thank you.

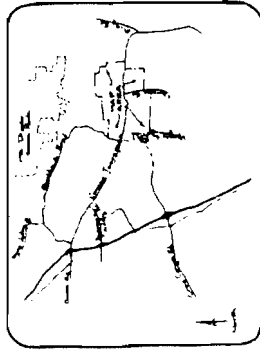
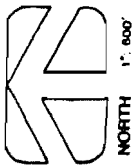
Sincerely,



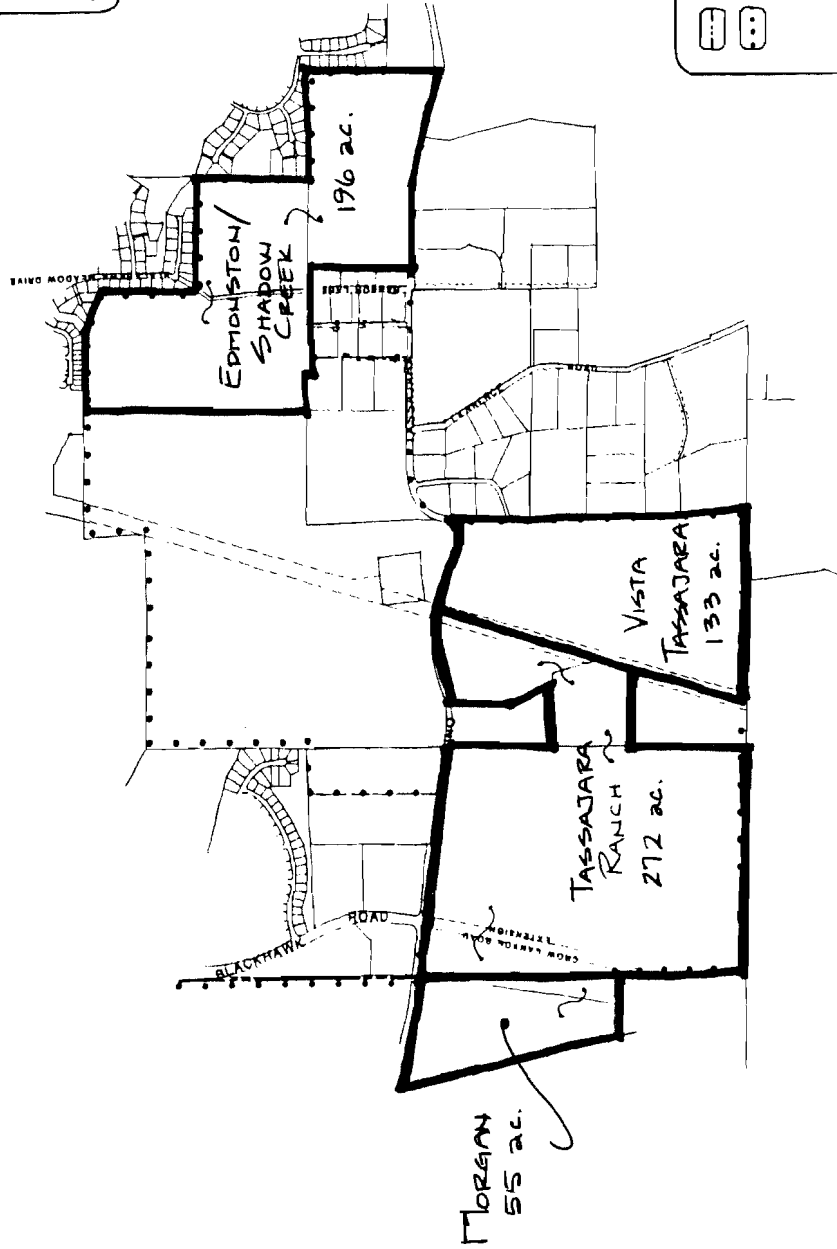
JR:rd

Judith A. Robbins
Assistant Town Attorney
Town of Danville

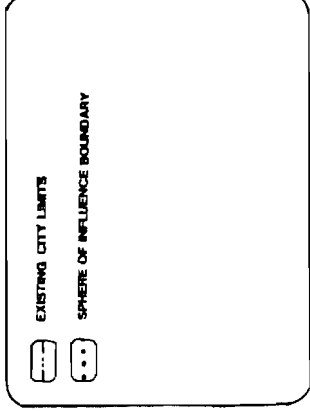
cc: Doug Offenhartz, Mayor
Michael Davis, Town Manager



VICINITY MAP



LEGEND



CITY OF DANVILLE : ANNEXATION PROGRAM



JONATHAN A. COHEN
A PROFESSIONAL LAW CORPORATION

TAIPEI OFFICE:
2ND FLOOR, SUITE 201
575 LIN-SHEN N. RD.
TAIPEI, TAIWAN
TELEPHONE: (02) 595-6124/6
FAX: (02) 596-8245

COHEN & HSU
ATTORNEYS AT LAW
ONE MARKET PLAZA
SPEAR STREET TOWER, SUITE 2210
SAN FRANCISCO, CALIFORNIA 94105
TELEPHONE
(415) 777-0300
TELECOPIER: (415) 777-1527
CABLE: ONEMKTP LZ
TELEX: WUI 67665

F R P C
MAR 11 8 51 AM '87
PASADENA OFFICE:
BROOKER BANK BUILDING
80 SOUTH LAKE AVENUE
SUITE 715
PASADENA, CALIFORNIA 91101
TELEPHONE: (818) 584-0891
FAX: (818) 584-1894

March 10, 1987

Robert Litig, Esq.
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

RE: Request for Written Opinion Regarding
Financial Interest of Mayor of Danville

Dear Mr. Litig:

I am writing this letter on behalf of Live Oak Associates II, a California Limited Partnership, sponsor of the Vista Tassajara Subdivision, which appeal is scheduled to be heard on March 19, 1987 before the Town Council of Danville. We are concerned about the potential conflict of interest that Doug Offenhartz has as Mayor in participating in the deliberation and action on the Vista Tassajara and Tassajara Ranch Projects. We understand that Mr. Offenhartz has a "financial interest" in the pending sale of the Morgan Property to Signature Properties, as that term is defined pursuant to Government Code Section 87103. We understand Mr. Offenhartz has requested a written opinion from the Fair Political Practices Commission in a letter dated March 3, 1987.

At this time, the Town Council is considering relative densities of the three projects within the Dougherty Road General Plan Amendment area, traffic holding capacities for the three subdivisions, common road fees and annexation of the three projects to the Town. Government Code Section 87100 et seq. restricts a public official from participating in a governmental decision in which he knows or has reason to know he has a financial interest. In this case, the three projects are inextricably linked; if the density of one or more of the projects is reduced because of a concern regarding the traffic holding capacity for all the projects or if the road fees are substantially increased, there could be a direct economic effect on the financial feasibility of acquiring and developing the Morgan Property. There has been a threat of litigation against all of the projects by Tassajara Now and Tomorrow, a local citizens group. If the City Council of Danville was to reduce the density of the Tassajara Ranch and Vista Tassajara in order to avert the chance of litigation against the Morgan Property there would appear to be a direct conflict.

COHEN & HSU

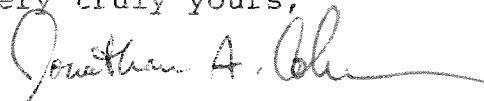
ATTORNEYS AT LAW

We understand that Mayor Offenhartz will not be participating in the decision on the appeal on the Morgan Property. However, because of the clear linkage of the three Dougherty Road projects, any decision on the two other projects will affect the financial feasibility of the Morgan project. For example, if densities are reduced on the Tassajara Ranch and the Vista Tassajara projects and/or if these two projects are referred back to the Planning Commission, while the Morgan project is allowed to proceed, clearly the Morgan project will realize a direct financial benefit, which would increase the likelihood of Mayor Offenhartz receiving what we understand to be a real estate brokerage commission on the Morgan project.

Because of this concern, we would appreciate it if Mayor Offenhartz would refrain from continued participation in the decision-making process regarding each of these projects. Otherwise, the actions of the Town Council could be so sufficiently tainted with regard to all three projects that decisions affecting them could be potentially set aside in court pursuant to Government Code Section 91003. We would refer you specifically to 3 FPPC Opinion 38 (1977) concerning the conflict of interest the FPPC determined to exist with regard to Mayor of Santa Clara's financial interest in properties neighboring an area considered for rezoning in which the FPPC concluded that the Mayor was required to disqualify himself from "making, participating in making or in any way attempting to use his official position to influence that decision." Moreover, a real estate brokerage commission is clearly within the scope of "financial interest" pursuant to Title 2 California Administrative Code Section 18704.3, and its nature and extent should be disclosed pursuant to Government Code Section 87206.

The opponents of the projects have expressed their willingness to undertake litigation to stop the projects. We are aware that the City Attorney has asked for an oral opinion regarding Mayor Offenhartz' conflict. If this opinion is favorable all the projects may be jeopardized by litigation challenging the actions of the Town Council and Mayor Offenhartz's participation in the decision making process. In light of this very real threat, we would urge that the FPPC prepare a written opinion on which all parties could rely if the litigation is initiated. I appreciate your consideration of this matter and would appreciate it if you would inform us of your position in writing, so that we are informed of the legal authority supporting your position.

Very truly yours,



JONATHAN A. COHEN

JAC/lm

cc: William A. Falik



California Fair Political Practices Commission

March 6, 1987

Judith A. Robbins
Assistant Town Attorney
Town of Danville
P.O. Box 698
Benicia, CA 94510

Re: 87-074

Dear Ms. Robbins:

Your letter requesting advice under the Political Reform Act was received on March 5, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Robert E. Leidigh, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh

Letter to 72

Telecom

3/11/87

5:00 - 5:18 pm

Morgan - C. W. 1
C. W. 1 - C. W. 1

Calif. Land Resources
Council for the State

Assigned C. W. 1 to ~~C. W. 1~~
returned 1/2 int. (1/100)

Assigned to Signature Project 1/85
\$10000

Pl. him for 1/2 int.

pl. him 1/2 cash
1/2 paid

had signed note to father, pl.
now cash - father got it
Sept 2/85

No longer in int.

Signature will be property in the last yr of
the option - April 15th of this year, they
will make last option payment, then close
within 1 yr.

No more cash payments.

He represents Morgan & the transaction -
signature represents itself

Commissioner is not with agent who is
responsible for first payment of option

land for the 1st year (first option) went
out & found a buyer (Signature of option)

reasonably foreseeable that it was at
the time it was made because the

Jonathan Cohen

2/11/87

Tiburon

If Major Offenders participate in any of the deliberations on the terms of the settlement, there is an outstanding threat to our by a group seeking to block all the projects.

Commissioner Messer which he is to

revere is dependent on what actually occurs. If it does end up there for any reason, then these commissioners would be lost.

City could decide a number of different things which have different effects. Could decide

(26th)

3/17/87 3:35 pm.

Went over our action (discussed previously with Diane & John McLean) regarding Mayor Chinko. As the facts stand now, w/ decisions pending on 3/17, he should disqualify himself as to all 3 points. This includes not participating in debate, if not clearing the meeting.

Explained our reasons for determination that disqual. or might be all 3 - real reason is that action is still an option - could revert to these Mayors of decisions. All affect the value of the property - Mayors still have an interest in the property. They are sure of personal income to him - also, his interests affecting value.

3/18/87 3:46 pm. Called John McLean before giving him a warning letter about election
(6 min)

F P P

WILLIAMS

MAR 9 9 04 AM '87

March 6, 1987

& ROBBINS

Diane Griffiths
General Counsel
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804

Attorneys at Law
1060 Grant Street
Suite 201
P.O. Box 698
Benicia, California
94510

(415) 228-3840
(707) 746-1011

Charles J. Williams
A Professional Corporation

Judith A. Robbins

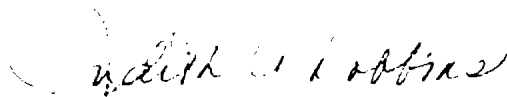
Michael R. Woods

Re: Request For Written Opinion Regarding
Financial Interest of Mayor of Danville

Dear Ms. Griffiths:

I wrote to you on March 3, 1987 requesting a written opinion. In that letter I advised you that I would be sending the Exhibit A, map of parcels. Enclosed are the Exhibit A maps which should be attached to the March 3 request. Thank you.

Sincerely,



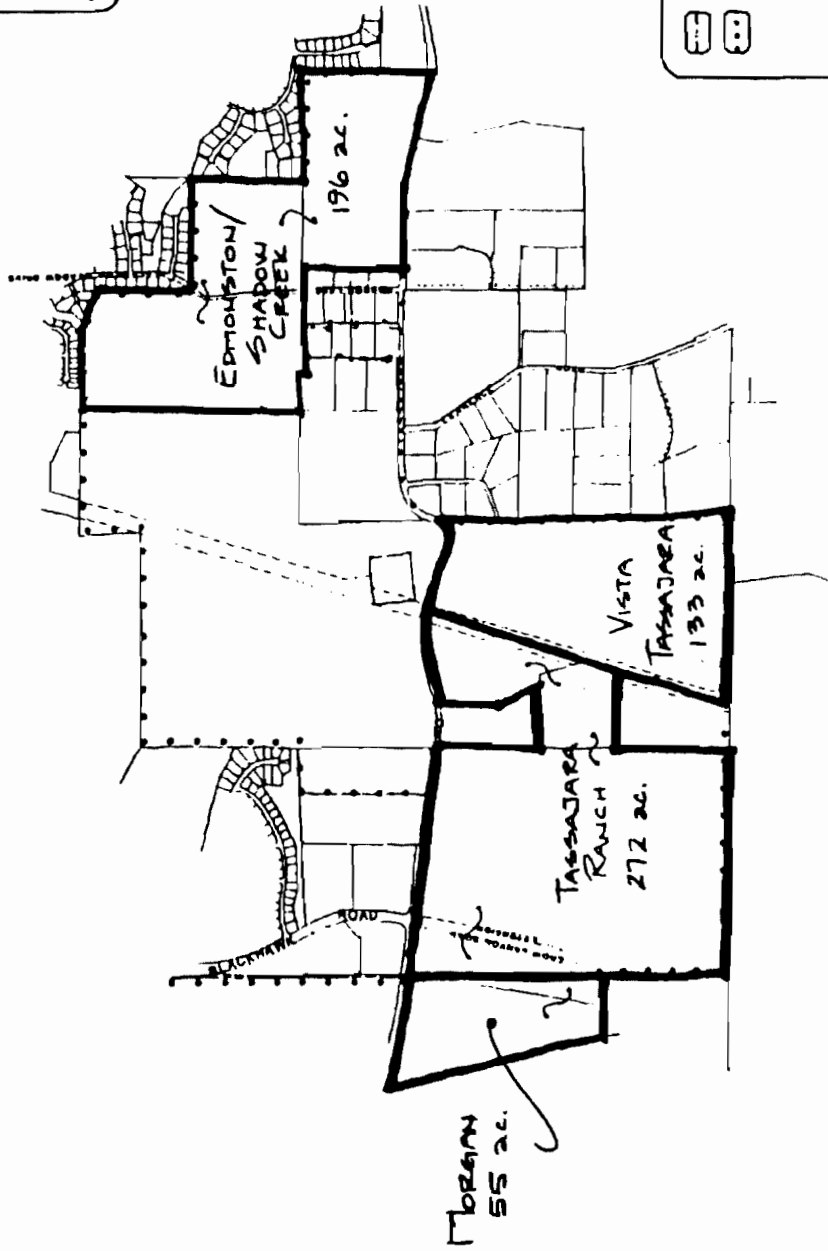
Judith A. Robbins
Assistant Town Attorney
Town of Danville

JR:rd

cc: Doug Offenhartz, Mayor
Michael Davis, Town Manager



VICINITY MAP



LEGEND

- EXISTING CITY LIMITS
- SPHERE OF INFLUENCE BOUNDARY

CITY OF DANVILLE : ANNEXATION PROGRAM

